

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 06-0038
Individual Income Tax
For the Years 1995 through 2004**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Proposed Assessment.

Authority: IC 6-3-1-3.5(a); IC 6-8.1-5-1(b); 45 IAC 3.1-1-1; I.R.C. § 61; I.R.C. § 61(a); I.R.C. § 62(a); I.R.C. § 7701(a)(26).

Arguing that the proposed assessments of individual income taxes were erroneous because the Department of Revenue relied upon incorrect information received from the Internal Revenue Service.

II. Gross Income – Adjusted Gross Income Tax.

Authority: IC 6-3-1-3.5(a)(3); IC 6-3-1-3.5(a)(4); IC 6-3-4-1.

Taxpayer maintains that he was not required to file state income tax returns during 1995 through 2004 because he did not receive taxable gross income.

STATEMENT OF FACT

Taxpayer is an Indiana resident who did not file state income tax returns for 1995 through 2004. The Department of Revenue (Department) asked that the taxpayer supply additional information. Afterwards, the Department requested copies of taxpayer's federal returns from the IRS. Based on the information contained within the returns, the Department determined that taxpayer should have been paying state income during the ten years and issued proposed assessments.

Taxpayer responded by sending letters to various state officials including officials at the Department. The Department concluded that taxpayer was protesting the assessments and submitted the matter to a hearing officer. Taxpayer was contacted by letter and offered the opportunity to explain his protest during an administrative hearing. Taxpayer declined the opportunity but provided additional written information purporting to establish that the proposed assessments were erroneous. This Letter of Findings results.

DISCUSSION

I. Proposed Assessment.

As a threshold issue, taxpayer challenges any assertion that he has participated in an “abusive tax scheme.” This Letter of Findings takes no position on whether taxpayer’s failure to pay Indiana income tax for 10 years is the consequence of a “scheme” because the issues raised in taxpayer’s protest can be addressed by duly considering the relevant state and federal law.

Taxpayer maintains that the proposed assessments are incorrect because the assessments were based upon federal returns which are “incorrect and disputed.” Taxpayer states that he did not receive a payment of “gains, profits, or income” during the course of a “trade or business” as defined in I.R.C. § 7701(a)(26).

The Department is unable to understand the significance of taxpayer’s citation to I.R.C. § 7701(a)(26). In full, the IRC section states that, “The term ‘trade or business’ includes the performance of the functions of a public office.” There is nothing in the information which indicates that the Department proposed the assessments because it believed that taxpayer earned money from performing “the functions of a public office.” The Department must conclude that taxpayer’s reliance on I.R.C. § 7701(a)(26) is ill-considered because the particular code section on which taxpayer relies is irrelevant.

The Indiana code relies upon federal adjusted gross income as the starting point for calculating the individual taxpayer’s Indiana adjusted gross income.

IC 6-3-1-3.5 states as follows: “When used in IC 6-3, the term ‘adjusted gross income’ shall mean the following: (a) In the case of all individuals ‘adjusted gross income’ (as defined in Section 62 of the Internal Revenue Code)” IC 6-3-1-3.5(a). Thereafter, the Indiana statute defines specific addbacks and deductions peculiar to Indiana which modify the federal adjusted gross income amount. The Department’s regulation restates this formulation. 45 IAC 3.1-1-1 defines individual adjusted gross income as follows:

Adjusted Gross Income for Individuals Defined. For Individual, “Adjusted Gross Income” is Adjusted Gross Income as defined in Internal Revenue Code § 62 modified as follows:

- (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
- (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
- (3) Make all modifications required by IC 6-3-1-3.5(a).

Both the statute, IC 6-3-1-3.5, and the accompanying regulation, 45 IAC 3.1-1-1, require an Indiana taxpayer use the federal adjusted gross income calculation – as determined under I.R.C. § 62 – as the starting point for determining that taxpayer’s Indiana adjusted gross income. Federal “adjusted gross income” is determined by starting with the taxpayer’s “gross income” and subtracting the allowable deductions under the federal tax code. I.R.C. § 62(a).

For federal income tax purposes, “gross income” means all income from whatever source and includes compensation for services. I.R.C. § 61. That portion of I.R.C. § 61 relevant to determining taxpayer’s “gross income” states as follows:

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived including (but not limited to) the following items:

- (1) Compensation for services including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

Taxpayer’s “notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the assessment is made.” IC 6-8.1-5-1(b). Taxpayer has failed to provide a substantive, legal basis upon which to determine that the taxpayers income during the 10 years at issue fall outside the purview of I.R.C. § 62 or that this income should not be counted as part of the taxpayer’s gross income under 45 IAC 3.1-1-2.

Taxpayer vigorously asserts that he did not receive “gains, profits, or income” during the course of “trade or business.” In support of this assertion, taxpayer states that he has “provided [his] sworn testimony to refute the erroneous information the IRS used in preparing the returns. [Taxpayer] reaffirms that testimony.”

However, taxpayer’s argument misses the mark. The Department concluded that – based upon the information contained within taxpayer’s federal returns – taxpayer had received “gross income;” taxpayer received income which fell within the definition of “all income from whatever source derived . . .” I.R.C. § 61(a). The Department then concluded that there were no grounds for deducting any amounts of taxpayer’s “gross income” to arrive at a figure called “adjusted gross income” which was subject to Indiana’s personal income tax.

The Department has no reason to doubt taxpayer’s sincerity or good faith but taxpayer’s “sworn testimony” is insufficient to establish that the proposed assessments were incorrect. The “sworn testimony” does not meet taxpayer’s burden under IC 6-8.1-5-1(b) of proving that the proposed assessments were incorrect.

FINDING

Taxpayer's protest is denied.

II. Gross Income.

Taxpayer explains that he was not required to file Indiana tax returns under IC 6-3-4-1. Specifically, taxpayer cites to the language found at IC 6-3-4-1 which states that "Returns with respect imposed by [the adjusted gross income act] shall be made by the following: (1) Every resident individual having for the taxable year gross income in an amount greater than the modifications provided under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4)."

In calculating an Indiana taxpayer's adjusted gross income, IC 6-3-1-3.5(a)(3) permits the Indiana taxpayer to "Subtract one thousand (\$1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars (\$1,000)." In calculating *Indiana* adjusted gross income, taxpayer subtracts a standard deduction from the amount of *federal* adjusted gross income.

In calculating an Indiana taxpayer's adjusted gross income, IC 6-3-1-3.5(a)(4) allows the Indiana taxpayer to "subtract one thousand dollars (\$1,000) for . . . each of the exemptions provided by Section 151(c) of the Internal Revenue Code . . . each additional amount allowable under Section 63(f) of the Internal Revenue Code; and . . . the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer." IC 6-3-1-3.5(a)(4) is a provision allowing the taxpayer to make certain, specific deductions from the *federal* adjusted gross income amount to arrive at *Indiana* adjusted gross income.

Taxpayer states that he has "submitted sworn testimony as to his lawful and legal requirement to make returns. [Taxpayer] reaffirms that testimony." Even considering taxpayer's sworn testimony to the contrary, there is nothing to substantiate taxpayer's claim that he was not required to file Indiana tax returns during 1995 through 2004. Even a cursory review of the information provided by the IRS unmistakably demonstrates that taxpayer was a "resident individual having for the taxable year gross income in an amount greater than the modifications provided under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4)." IC 6-3-4-1. Taxpayer's "sworn testimony" is insufficient to overcome the plain fact that taxpayer received an amount of income which required him to file Indiana income tax returns from 1995 through 2004 and to correctly report his income on those returns.

FINDING

Taxpayer's protest is denied.